

# The Gazette of India



EXTRAORDINARY

PART II—Section 1

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MINISTRY OF LAW

New Delhi, 10th April 1953

The following Act of Parliament received the assent of the President on the 9th April, 1953 and is hereby published for general information :—

## THE ADMINISTRATION OF EVACUEE PROPERTY (AMENDMENT) ACT, 1953.

No. 11 OF 1953

[9th April, 1953]

An Act further to amend the Administration of Evacuee Property Act, 1950.

Be it enacted by Parliament as follows :—

1. **Short title and commencement.**—(1) This Act may be called the Administration of Evacuee Property (Amendment) Act, 1953.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. **Amendment of section 2, Act XXXI of 1950.**—In section 2 of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the principal Act),—

(a) in clause (d),—

(1) at the end of sub-clause (iii), the word “or” shall be inserted, and after that sub-clause and before the *Explanation* thereto, the following clauses shall be inserted, namely :—

“(iv) who has, after the 18th day of October, 1949, transferred to Pakistan, without the previous approval of the Custodian, his assets or any part of his assets situated in any part of the territories to which this Act extends; or

(v) who has, after the 18th day of October, 1949, acquired, if the acquisition has been made in person, by way of purchase or exchange, or, if the acquisition has been made by or through

a member of his family, in any manner whatsoever, any right to, interest in, or benefit from, any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan;";

(2) the *Explanation* to sub-clause (iii) shall be numbered as *Explanation I* and after that *Explanation* as so numbered, the following further *Explanations* shall be inserted, namely:—

*"Explanation II.*—For the purposes of sub-clause (iv), the transfer to Pakistan by any person of any reasonable sum of money in accordance with the rules made in this behalf by the Central Government for the purpose of financing any transaction in the ordinary course of his trade or for the maintenance of any member of the family of such person shall not be deemed to be a transfer of his assets within the meaning of that sub-clause.

*Explanation III.*—For the purposes of sub-clause (v), the acquisition of any right to, interest in, or benefit from, any such property as is referred to in that sub-clause by a firm, private limited company or trust of which any person is a partner, member or beneficiary, as the case may be, shall be deemed to be an acquisition by that person of such right, interest or benefit within the meaning of that sub-clause."

(b) clause (e) shall be omitted;

(c) in clause (f), for the words beginning with ' "evacuee property" means' and ending with the words "to the extent of such right or interest," the following shall be substituted, namely:—

' "evacuee property" means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity), and includes any property which has been obtained by any person from an evacuee after the 14th day of August, 1947, by any mode of transfer which is not effective by reason of the provisions contained in section 40.'

**3. Omission of section 3, Act XXXI of 1950.**—Section 3 of the principal Act shall be omitted.

**4. Amendment of section 10, Act XXXI of 1950.**—In sub-section (2) of section 10 of the principal Act, after clause (l), the following clause shall be inserted, namely:—

"(l) in any case where the evacuee property which has vested in the Custodian consists of fifty-one per cent. or more of the shares in a company, the Custodian may take charge of the management of the whole affairs of the company and exercise, in addition to any of the powers vested in him under this Act, all or any of the powers of the directors of the company, notwithstanding that the registered office of such company is situate in any part of the territories to which this Act extends and notwithstanding anything to the contrary contained in this Act or the Indian Companies Act, 1913 (VII of 1913) or in the articles of association of the company:

Provided that the Custodian shall not take charge of such management of the Company except with the previous approval of the Central Government."

**5. Amendment of section 12, Act XXXI of 1950.**—In sub-section (1) of section 12 of the principal Act,—

(a) for the words “where such allotment, lease or agreement has been granted or entered into after the 14th day of August, 1947” the following shall be substituted, namely:—

“whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Act.”

(b) the following proviso shall be added, namely:—

“Provided that in the case of any lease granted before the 14th day of August, 1947, the Custodian shall not exercise any of the powers conferred upon him under this sub-section unless he is satisfied that the lessee—

(a) has sublet, assigned or otherwise parted with the possession or the whole or any part of the property leased to him; or

(b) has used or is using such property for a purpose other than that for which it was leased to him.”

**6. Insertion of new section 12A in Act XXXI of 1950.**—After section 12 of the principal Act, the following section shall be inserted, namely:—

“12A. *Special provisions with respect to transfer of tenancy rights of evacuees.*—(1) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, where tenancy rights have vested in the Custodian as evacuee property and the Custodian has granted a lease in respect of such property, the Custodian may, in any case where the lessor under whom the property was held immediately before it vested in the Custodian is not an evacuee, declare, by general or special order, that with effect from such date as may be specified in the order he shall stand absolved of all responsibilities with respect to the property or the lease granted by him.

(2) On the making of any such declaration as is referred to in sub-section (1),—

(a) the lease granted by the Custodian shall be deemed to have effect as if granted by the lessor under whom the property was held immediately before the Custodian assumed possession or control thereof and shall continue to have such effect until it is determined by lapse of time or by operation of law;

(b) all sums realised by the Custodian in respect of the said lease before the date of the declaration referred to in sub-section (1) shall, subject to the deduction of fees, if any, payable to the Custodian, become payable to the lessor against whom the lease has now effect.

(3) Nothing contained in this section shall—

(a) be deemed to empower the Custodian to grant, without the consent in writing of the original lessor or his successor in interest—

(i) where the original lease is for a specified period, any lease for a period extending beyond the date on which the original lease would have expired; or

(ii) where the original lease is from year to year or month to month or on any other similar tenure, any lease on a tenure different from that of the original lease;

(b) render the Custodian liable to any person for any sum in excess of the sum payable to the lessor under clause (b) of sub-section (2), or

(c) prejudice any rights of the lessor or the lessee, to which he may be entitled under any other law for the time being in force, consistently with the terms and conditions, if any, of the lease granted by the Custodian."

**7. Amendment of section 16, Act XXXI of 1950.**—In section 16 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

"16. *Restoration of evacuee property.*—(1) Subject to such rules as may be made in this behalf, the Central Government or any person authorised by it in this behalf may, on application made to it or him by an evacuee or by any person claiming to be the heir of an evacuee, and, on being satisfied that it is just or proper so to do, grant to the applicant a certificate stating that any evacuee property, which has vested in the Custodian and to which the applicant would have been entitled if this Act were not in force, shall be restored to him.

(2) If the evacuee or, as the case may be, the heir to whom a certificate has been granted under sub-section (1) applies to the Custodian in writing for the restoration of the evacuee property which has vested in the Custodian and in respect of which the certificate has been granted, the Custodian shall, on the production by the applicant of the certificate and subject to the other provisions contained in this section and in any rules that may be made in this behalf, restore the evacuee property to the applicant.

(2A) On receipt of an application under sub-section (2), the Custodian shall cause public notice thereof to be given in the prescribed manner and after holding a summary inquiry into the claim in such manner as may be prescribed shall—

(a) if he is satisfied with respect to the title of the applicant to the property, make a formal order restoring the property to the applicant; or

(b) if he is not so satisfied, reject the application, without prejudice to the right of the applicant to establish his title to the property in a civil court; or

(c) if he entertains any doubt with respect to the title of the applicant to the property, refer him to a civil court for the determination of his title thereto:

Provided that no order for the restoration of any evacuee property shall be made under this section unless provision has been made in the prescribed manner for the recovery of any amount due to the Custodian in respect of the property or the management thereof."

**8. Substitution of new section for section 18, Act XXXI of 1950.**—For section 18 of the principal Act, the following section shall be substituted and shall be deemed always to have been substituted, namely —

*“18. Occupancy or tenancy rights not to be extinguished.—*

(1) Where the rights of an evacuee in any land or in any house or other building consist or consisted of occupancy or tenancy rights, nothing contained in any law for the time being in force or in any contract or in any instrument having the force of law or in any decree or order of any court, shall extinguish or be deemed to have extinguished any such rights either on the tenant becoming an evacuee within the meaning of this Act or at any time thereafter so as to prevent such rights from vesting in the Custodian under the provisions of this Act or to prevent the Custodian from exercising all or any of the powers conferred on him by this Act in respect of any such rights, and, notwithstanding anything contained in any such law, contract, instrument, decree or order, neither the evacuee nor the Custodian, whether as an occupancy tenant or as a tenant for a certain time, monthly or otherwise, of any land, or house or other building shall be liable to be ejected or be deemed to have become so liable on any ground whatsoever for any default of—

(a) the evacuee committed after he became an evacuee or within a period of one year immediately preceding the date of his becoming an evacuee; or

(b) the Custodian.

(2) Where any person acquires or has acquired any rights under a Provincial Act or a State Act in respect of any property by reason of being in possession of that property, whether in pursuance of a grant, lease, or allotment made by the Custodian or otherwise, the acquisition of such rights shall not in any way affect or be deemed to have affected the rights and powers conferred on the Custodian under this Act in respect of that property.”

**9. Omission of Chapter IV, Act XXXI of 1950.**—Chapter IV of the principal Act shall be omitted.

**10. Amendment of section 24, Act XXXI of 1950.**—In section 24 of the principal Act, in sub-section (1),—

(a) the word and figures “section 19” shall be omitted ;

(b) in the proviso, for the words, brackets, letters and figures “sub-clause (iii) of clause (d) of section 2, or that the property is not evacuee property within the meaning of sub-clause (2) of clause (f) of section 2,” the words, brackets, letters and figure, “sub-clause (iii) or sub-clause (iv) or sub-clause (v) of clause (d) of section 2,” shall be substituted.

**11. Amendment of section 25, Act XXXI of 1950.**— In section 25 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Any person aggrieved by an order under section 7 declaring his property to be evacuee property on the ground that he is an

evacuee within the meaning of sub-clause (iii) or sub-clause (iv) or sub-clause (v) of clause (d) of section 2 may prefer an appeal, in such manner and within such time as may be prescribed, to the district judge nominated in this behalf by the State Government."

**12. Amendment of section 26, Act XXXI of 1950.**—Sub-section (3) of section 26 of the principal Act shall be omitted.

**13. Substitution of new sections for sections 40 and 41 in Act XXXI of 1950.**—For sections 40 and 41 of the principal Act, the following sections shall be substituted, namely:—

*"40. Validity of transfers respecting property subsequently declared to be evacuee property.*—(1) No transfer made after the 14th day of August, 1947, by or on behalf of any person in any manner whatsoever of any property belonging to him shall be effective so as to confer any rights or remedies in respect of the transfer on the parties thereto or any person claiming under them or either of them, if, at any time after the transfer, the transferor becomes an evacuee within the meaning of section 2 or the property of the transferor is declared or notified to be evacuee property within the meaning of this Act, unless the transfer is confirmed by the Custodian in accordance with the provisions of this Act.

(2) Nothing contained in sub-section (1) shall apply to the transfer for valuable consideration of any such property as is referred to therein in any of the following cases, namely:—

(a) where the transfer has been made with the previous approval of the Custodian before the commencement of the Administration of Evacuee Property (Amendment) Act, 1953;

(b) where the transferor has not left or does not leave India for Pakistan within a period of two years from the date of the transfer:

Provided that in the case of a transfer made before the commencement of the Administration of Evacuee Property (Amendment) Act, 1953, the transferor had not left India for Pakistan before such commencement, notwithstanding that a period of two years had already elapsed before such commencement;

(c) where the transfer is made after the commencement of the Administration of Evacuee Property (Amendment) Act, 1953, and—

(i) the value of the property or properties transferred in any one year is less than five thousand rupees, or

(ii) the transfer is made with the previous approval of the Custodian or in the prescribed cases with the previous approval of the Custodian General.

(3) An application under sub-section (1) for the confirmation of any transfer may be made by the transferor or the transferee or any person claiming under, or lawfully authorised by, either of them to the Custodian within two months from the date of the transfer or within two months from the date of the declaration or notification referred to in sub-section (1) whichever is later, and the provisions of section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to any such application.

(4) Where an application under sub-section (1) has been made to the Custodian for confirmation, he shall hold an inquiry in respect thereof in the prescribed manner and may reject the application if he is of opinion that—

(a) the transaction has not been entered into in good faith or for valuable consideration; or

(b) the transaction is prohibited under any law for the time being in force; or

(c) the transaction ought not to be confirmed for any other reason.

(5) Where, in respect of any transfer made before the commencement of the Administration of Evacuee Property (Amendment) Act, 1953, any application for confirmation thereof has been rejected solely on the ground—

(a) that although the transaction was entered into in good faith, the consideration paid was not adequate, or

(b) that the application was barred by limitation,

then, notwithstanding anything to the contrary contained in any law or contract or decree or order of a civil court or other authority, but subject to any rules that may be made by the Central Government in this behalf, the Custodian may and shall, where the application for confirmation was rejected by the Custodian General, if the Custodian General so directs exercise any of the following powers in respect of the transfer, namely:—

(i) confirm the transfer if the consideration paid for the transfer is adequate;

(ii) confirm the transfer, if the transferee agrees to pay to the Custodian the difference in value between the value of the property as assessed by the Custodian and the amount actually paid by the transferee to the transferor;

(iii) if the transferee agrees, take possession of such part of the property as, after dividing it by metes and bounds, is equivalent in value to the difference between the value of the property as assessed by the Custodian and the amount actually paid by the transferee to the transferor;

(iv) if the transferee agrees, take possession of the entire property by paying off to the transferee the amount which the Custodian finds as having been actually paid by the transferee to the transferor as consideration for the transfer; or

(v) if the transferee does not agree to any of the courses referred to in clauses (ii) to (iv) inclusive, auction the property and if the sale proceeds exceed the amount actually paid by the transferee, pay to the transferee the amount paid by him and take over the balance and if the sale proceeds are equivalent to, or fall short of, the amount actually paid by the transferee, pay the entire sale proceeds to the transferee:

Provided that where any application for confirmation of a transfer is rejected on the ground specified in clause (b) of this sub-section the powers conferred on the Custodian by this section shall not be exercised unless the Custodian finds that the transaction has been entered into in good faith.

(6) If the application is not rejected under sub-section (4), the Custodian may confirm the transfer either unconditionally or on such terms and conditions as he may think fit to impose.

(7) The Custodian may, in respect of any application for confirmation of a transfer pending before him on the commencement of the Administration of Evacuee Property (Amendment) Act, 1958, which is liable to be rejected on either of the grounds specified in clauses (a) and (b) of sub-section (5), exercise any of the powers conferred on him under that sub-section.

(8) For the removal of doubts, it is hereby declared that every property transferred in contravention of the provisions of this section which does not confer any rights or remedies in relation to the transfer on the parties thereto shall be deemed to be property declared to be evacuee property within the meaning of sub-section (1) of section 7 and to have vested in the Custodian in accordance with the provisions of section 8.

41. *Transactions relating to evacuee property void in certain circumstances.*—Subject to the other provisions contained in this Act, every transaction entered into by any person in respect of property declared or deemed to be evacuee property within the meaning of this Act, shall be void unless entered into by or with the previous approval of the Custodian."

**14. Amendment of section 46, Act XXXI of 1950.**—In section 46 of the principal Act, clause (b) shall be omitted.

**15. Substitution of new section for section 52, Act XXXI of 1950.**—For section 52 of the principal Act, the following section shall be substituted, namely:—

"52. *Power to exempt.*—The Central Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act or of the rules made thereunder shall not apply, or shall be deemed never to have applied, or shall cease to apply, or shall apply only with such modifications or subject to such conditions, restrictions or limitations as may be specified in the notification, to or in relation to any class of persons or class of property."

**16. Amendment of section 56, Act XXXI of 1950.**—In section 56 of the principal Act,—

(1) in sub-section (2),—

(a) after clause (b), the following clause shall be inserted, namely:—

"(bb) the transfer by the Custodian of any case pending before any officer subordinate to him or the withdrawal to himself for disposal of any case so pending or the exercise of any similar powers by the Custodian General in respect of cases pending before any officer subordinate to him;";

(b) for clause (g), the following clause shall be substituted, namely:—

"(g) the manner in which applications for the previous approval of the Custodian may be made under section 40



and the matters which he shall take into account in granting such approval, and the nature of cases and the circumstances in which the Custodian may confirm or refuse to confirm a transfer under that section:—

(2) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) All rules made under sub-sections (1) and (2) after the commencement of the Administration of Evacuee Property (Amendment) Act, 1953 shall be laid for not less than fourteen days before Parliament as soon as possible after they are made.”

**17. Effect of repeal of Chapter IV, Act XXXI of 1950.**—(1) The repeal of Chapter IV of the principal Act shall not affect—

(a) any property which has vested in the Custodian under section 22 of the principal Act before the commencement of this Act, or

(b) any proceeding pending under that section on such commencement,

and any such property shall continue to so vest and any such proceeding may be continued as if this Act had not been passed.

(2) Save as aforesaid, on the repeal of Chapter IV of the principal Act, every order passed under section 19 of the principal Act declaring any person to be an intending evacuee and every attachment of property effected under that section shall cease to have effect and every proceeding pending under that section shall abate.

(3) Save to the extent to which it is otherwise provided in this section, the mention of particular matters in this section shall be without prejudice to the general application of section 6 of the General Clauses Act, 1897 (X of 1897), with respect to the effect of repeals.

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K. Y. BHANDARKAR,

*Secy. to the Govt. of India.*

